THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 25299 OF 2003

Dated 1st August 2007

Between:

Mohd Zaheer

…Petitioner

and

The Secretary and another.

…Respondents

O R D E R:

The petitioner is the owner of a lorry bearing No.AP-11-T-5678. It is used mostly in transporting the cement. The second respondent herein issued show-cause notice dated 18.10.2003 to the petitioner, alleging that on several occasions, the vehicle was overloaded and required the petitioner to pay a sum of Rs.57,000/-, towards compounding fee for overloading. The same is challenged in this writ petition.

Heard the learned counsel for the petitioner and learned Government Pleader for Transport.

The second respondent issued notice, in purported exercise of power under Section 86 of the Motor Vehicles Act. Sub-section (5) thereof, empowers the Transport Authority, to recover the computed amount of money, in lieu of cancellation, or suspension of permit.

The occasion to compound a violation arises, when a vehicle is found to have violated the provisions of law, or conditions of permit. In the impugned notice, it is not even mentioned as to when the petitioner had violated the conditions, and which Transport Authority had noticed the same. The only basis for levy of the amount, against the petitioner, is alleged to have gathered from the records of Cement Corporation of India, Tandur. The petitioner was not even required to explain about the said findings.

Though the one issued to the petitioner is named as show-cause notice, no where in it, the second respondent required or permitted the petitioner, to submit explanation. He has, straight away, computed a sum of Rs.57,000/-, and required the petitioner to pay that amount. The petitioner was also threatened that if he fails to pay that amount, necessary action will be taken to recover the compounding fee.

An authority can levy compounding fee, only when a violation is noticed and the violator agrees for such a course. Therefore, the impugned notice suffers from more irregularities than one. It cannot be sustained either on facts, or in law.

Hence, the writ petition is allowed, and the impugned notice is set aside. There shall be no order as to costs.

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02.08.2007

kdl